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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/427,388	10/26/1999	KEVIN LLOYD GRIMES	RCA-89.086	3105

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EXAMINER	
HARPER, KEVIN C	
ART UNIT	**PAPER NUMBER**
2616	

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/427,388	GRIMES ET AL.	
	Examiner	Art Unit	
	Kevin C. Harper	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 September 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 3-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Arguments

Applicant's arguments, filed September 25, 2006 with respect to transport protocols in Eyer been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Cuccia in view of Eyer and applicant's admitted prior art.

Applicant's remaining arguments filed September 25, 2006 have been fully considered but they are not persuasive.

1. Applicant argued that Cuccia does not disclose an adaptive protocol decoder. However, the protocol decoder in Cuccia (fig. 2) adaptively selects a desired program stream.

2. In response to applicant's argument that there is no teaching to add the processing function of Eyer in the system of Cuccia, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

3. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Eyer provides motivation for receiving several transport protocols (satellite,

terrestrial and cable) so that the user can receive the different television formats offered by broadcasters (col. 2, lines 23-45) and Yu provides motivation for switching the operation of an electronic device as appropriate (col. 4, lines 10-17).

4. In response to applicant's argument that Yu is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Yu provides a means for changing operating modes in an electronic device which is pertinent to the change of data modes as described in figs. 4-7 of the application.

5. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cuccia (US 6,157,673) in view of Eyer et al. (US 5,982,411) and applicant's admitted prior art.

6. Regarding claims 1, 3 and 10-12, Cuccia discloses an adaptive transport decoder (figs. 1 or 2) comprising a source of a first stream of packets (TSx; fig. 3) each including a payload and having a first transport protocol, a source of a second stream of packets, a protocol decoder (fig. 1, item 102; fig. 2, item 202) coupled to the sources for extracting payloads from the packets, and a selector (fig. 1, item 104; fig. 2, item 204) coupled to the packet sources and an output terminal coupled to the protocol decoder for selecting one of the first stream of sources to the decoder. Further regarding claim 12, data from the packet header (fig. 3, item PH) is stored in a register for later use by the decoder (col. 4, line 56 through col. 5, line 2).

7. However, Cuccia does not disclose that the packets have different first and second transport paths. Eyer discloses a source of a first stream of packets (item 240) having a first path (col. 7, line 61 through col. 8, line 6; col. 10, lines 59-63) and a source of a second stream of packets (item 250) having a second path (col. 8, lines 8-13; col. 8, lines 13-17). A protocol decoder (item 265) is coupled to the first and second packet stream sources and extracts the respective payloads from the packets (col. 7, lines 63-65; col. 8, lines 5-7) from a selected one of the first and second packet sources (col. 9, lines 33-36 and 43-56). Further regarding claim 3, the protocol decoder is a processor (col. 7, lines 63-65) responsive to control programs for extracting payloads from respective transport streams. The protocol decoder inherently has a third control program for switching between the first control program and the second control program (col. 9, lines 33-42). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to receive and decode transport streams of different transport

paths in the inventions disclosed in Cuccia in order to conveniently view television programs transmitted though different networks (Eyer, col. 2, lines 23-38 and 45-50).

8. Further, Cuccia in view of Eyer does not specifically disclose that the packets of different transport paths have different transport protocols. Although, Eyer discloses digital satellite broadcasts (col. 2, lines 23-39; note: DBS) and digital terrestrial broadcasts (col. 10, lines 60-62; note: ATSC). Further, Applicant's admitted prior discloses that packets having different transport paths have different transport protocols (pages 1-2; note: ATSC has a different format than DBS). Therefore, it would be obvious to one skilled in the art at the time the invention was made to have different transport protocols in the invention of Cuccia in view of Eyer in order to provide data as related to the communication medium or preference, as is known in the art (specification, page 1, note: prior-art proprietary transport formats).

Claims 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cuccia in view of Eyer et al. and applicant's admitted prior art, as applied to claim 3 above, and further in view of Yu (US 5,410,709).

9. Regarding claims 4-9, Cuccia in view of Eyer does not disclose that the first and second control programs comprise a packet handler, several interrupt drivers and an interrupt vector containing a pointer to an interrupt driver, and reallocating a buffer. Yu discloses a controlling system (Figure 1) that has interrupt vectors for pointing to stored control information (col. 4, line 67 through col. 5, line 7) and user information (Figure 2b). The control programs are chosen using a third control program (col. 5, lines 10-15) and a buffer is reallocated (Figure 3a, step MLX DR., "index into interrupt"). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to have a interrupt drivers and interrupt vectors for

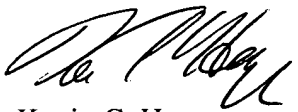
pointing to memory locations and reallocate memory locations to a buffer in the invention of Cuccia in view of Eyer in order to appropriately invoke control information (col. 3, lines 56-64).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Harper whose telephone number is 571-272-3166. The examiner can normally be reached weekdays from 11:00 AM to 7:00 PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To, can be reached at 571-272-7629. The centralized fax number for the Patent Office is 571-273-8300. For non-official communications, the examiner's personal fax number is 571-273-3166 and the examiner's e-mail address is kevin.harper@uspto.gov.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications associated with a customer number is available through Private PAIR only. For more information about the PAIR system, see portal.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kevin C. Harper

November 26, 2006